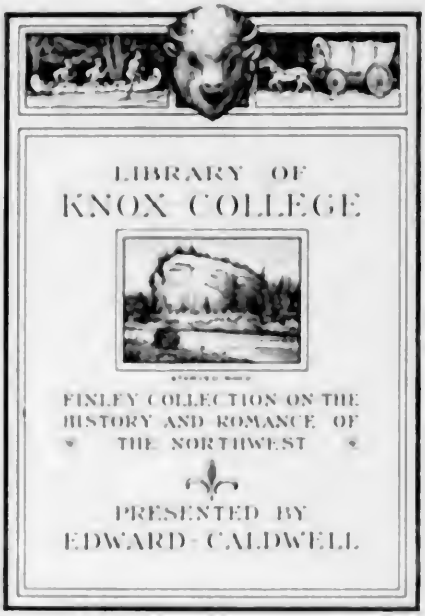
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ILLINOIS INTELLIGENCER---EXTRA.

AN

ADDRESS,

DELIVERED BY

NINIAN EDWARDS,

GOVERNOR OF THE STATE OF ILLINOIS,

TO BOTH HOUSES OF THE LEGISLATURE,

DECEMBER 7, 1830.

PRINTED BY ORDER OF THE LEGISLATURE.

VANDALIA:

PRINTED BY ROBERT BLACKWELL, PUBLIC PRINTER.

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1830.

AN

ADDRESS,

DELIVERED TO THE LEGISLATURE OF ILLINOIS.

Fellow Citizens of the Senate, and House of Representatives.

CONFIRMED by reflection in the views which I presented to your predecessors, at the last session of the General Assembly, on the subject of the public lands, and more and more convinced, by daily developements of the tendency of the present mode of disposing of them, to check the growth, retard the improvement, and paralize all the great interests of the State, I feel myself called upon by a sense of duty, too imperious to be overlooked, on an occasion which will most probably terminate my political life forever, to invite your attention to that subject, and earnestly to recommend it to your most deliberate consideration. The recent discussions which it has undergone throughout the State, and the lively interest thereby excited among our fellow-citizens, have created a very general expectation that you will, with an earnest desire to arrive at correct conclusions, dispassionately investigate the right of the state to the public lands within its limits, and either abandon it altogether; or adopt the most effectual means in your power of enforcing it upon the General Government, with a view to an amicable adjustment, by the surrender of those lands to the State upon just and equitable terms. If our right will not bear the test of fair investigation, we should best consult the wishes, and conform to the highminded and honorable sentiments of our fellow-citizens by forbearing to insist upon it. On the other hand, if it be just, duty to them, as faithful representatives of their wishes, feelings, and interests, requires that we should, without regard to party feelings, or individual partialities, zealously adopt all such means as seem most likely to obtain it, upon the best practicable terms.

Clear and indisputable as our right may be, we need scarcely expect its acknowledgement by Congress, while the state itself fails to vindicate it with energy and decision. It certainly will never be forced upon us against our wishes; nor yielded to us without asking for it. It cannot, therefore, be matter of surprise, if, as has been

Typographical errors by the manuscript
be corrected with the pen

said, it has hitherto received but little favor from Congress, since, while the assertion of a distinguished senator of the U. S. from South Carolina, made in his place, that, *the new States "with very few exceptions, believe that such a surrender would be destructive to their morals and harmony,"* has been permitted to pass uncontradicted; other representations have been made in Congress calculated to produce the impression that, such a measure *would be desirable to but very few of our own fellow-citizens.*

These representations may be true, but I am greatly mistaken if they are; and if they are not, it seems to be particularly incumbent upon the representatives of the people to correct the unfortunate influence, which, if uncontradicted by them, they must necessarily have upon an object highly approved, and ardently desired by their constituents. Though, with as good opportunities of knowing the sentiments of the members of the last Legislature in regard to the views I presented to them on this subject as any other individual, I could discover but little, if any opposition, and certainly had the most conclusive evidence of the concurrence of a large majority of them, yet we have all seen that *they* have been represented as opposed to the right in question, upon the assumed ground, that, they had failed to sanction those views.

These circumstances render it of the last importance that, the sentiments of the state should be unequivocally expressed, and faithfully represented. The time has arrived for us all to express our opinions, and to testify our sincerity by acting in conformity to them.

This subject being more vitally important to the general welfare of the State, and more deeply interesting to every citizen thereof, than any which has ever hitherto occupied its attention, claims preeminent consideration, and a more controlling influence than any other. For what possible event could produce such beneficent results as a surrender of those lands to the states upon terms that would enable it to provide for the wants of the poor, by granting donations of land to actual settlers; to encourage education; improve the navigation of our water courses; construct roads and canals; and impart encouragement and energy to every description of agricultural, commercial, and manufacturing industry and enterprize? Deeply interested as our constitutens may feel in regard to other political affairs, it is not to be believed that, they would be willing to see this postponed to, or controlled by any one of them. All of us therefore who are its friends and advocates, besides the obligations of duty to our constituents, owe it to ourselves, to support it with a promptness and energy, calculated to evince a sincere and predominent desire for its success; since, the people could neither consider themselves well treated, should an interest of such vast magnitude be rendered subordinate to others of inferior consideration, nor readily credit professions in favor of it, by those who neglect any reasonable means of promoting its accomplishment.

To remain longer satisfied with the present mode of disposing of the public lands would betray an insensibility to its deleterious effects upon the prosperity of the state, or a spirit of servility and submission

that must forever be rebuked by the noble examples set us by those patriarchs of the revolution, our venerated sires, whose wisdom, patriotism, and valor, laid the foundations of that high destiny to which our nation is rapidly advancing. Regarding the price demanded for public lands, within the then colonies of Great Britain, as calculated to render their acquisition difficult, and to check the population of their country, they indignantly denounced it as a grievance; and ably contended that, "from the nature and purpose of civil institutions, all the lands within the limits which any particular society has circumscribed around itself, are assumed by that society, and subject to their allotment;" that, this may be done by themselves assembled collectively, or by their legislature to whom they may have delegated sovereign authority; and that, "if they are allotted in neither of these ways, each individual of the society may appropriate to himself such lands as he finds vacant, and occupancy will give him title.—(1 vol. Jefferson's Memoirs, p. 114.)

If then, we have not less to expect from the Government of the U. S. than they had from that of G. Britain, and are not bound to submit to that which it was honorable and patriotic in them to resist—If, indeed, our rights as a free, sovereign, and independent State, are not inferior to those of the former British colonies, we have the sanction of the highest authority for complaining of grievances in regard to public lands, vastly greater than theirs were; and have nothing to apprehend from asserting a claim, which has thus been supported by such illustrious patriots as Thomas Jefferson.

The price demanded by the U. S. for the lands in question, being far greater than was ever required by the British Crown, would of itself proportionally increase the difficulty of their acquisition, and check the population of our State; but these evils are greatly magnified and aggravated by the peculiar circumstances under which that price has been so long continued. For, while all the states owning vacant lands, have uniformly sold them for much less, and thereby prevented the settlement of the public lands within this state, as far as it could be effected by affording superior inducements to the sale and settlement of their own, the pure and liberal donations that are freely granted by neighboring foreign Powers, are not only depriving us of a large population which we should otherwise receive, but are, from time to time, producing copious currents of emigration from among ourselves. Nothing is less to be supposed than that the patriots of the revolution would have tamely and silently acquiesced in a policy so adverse to their interests. They felt themselves called upon to remonstrate against a price which we should always have considered moderate, and which, was not calculated or intended to influence emigration to one part more than another. How much more then, would not any one of the colonies have felt aggrieved had the price of its lands been fixed by the common Government of them all, much higher than the average rate at which those of other colonies could be obtained?

Supposing the U. S. to be the owners of the lands in question, under an obligation to sell them for the common benefit of the Union, fair-

ples and justice would seem to require that, they should not demand more for them, than the average rate at which individual states have constantly sold wild lands of equal value. And so long as the old states continue to demand for these lands more than they have ever asked for their own, every reflecting man must regard it as a manifestation of an undue partiality towards themselves; or an unfriendly feeling towards the new states.

But whilst this policy thus tends to check emigration to the state, and even to abstract from us a part of our present population, it is calculated to inflict distress and ruin upon those who remain. Operating as a perpetual drain of every surplus dollar in the state, at the same time, that a large amount of revenue is collected from us, to be sent elsewhere, the present land system, if not abandoned, must ultimately put a stop to all improvements; paralize industry and enterprize of every description; and reduce us to a situation in which it will be utterly impossible to command the means of supplying absolute wants. For how is such an exhausting operation to be always withstood? Where and how is the money to be obtained which, under such circumstances, our necessities and misfortunes alone may require?

An eminent statesman, whose distinguished talents, and elevated standing with the nation, give to his views and opinions the highest authority, speaking, on a recent occasion, of the ordinary collection of revenue in one state and expending it in others, says "this is of all the effects of bad legislation the most affective and destroying—as well might the blazing orb of day when sent to warm us, drink up, as it does the moisture of the soil, and the providential dews of night not return it, and yet the fructification of the earth, and the gathering of its fruits be hoped for as to expect a country to thrive where a revenue is collected and spent abroad—and he emphatically adds that, a country in which this is the case must *wither and perish*.

What then have we to hope for? As all new countries which have lands to clear, farms to open, improvements to make, must, from the nature of things, be so much the more dependent upon foreign supplies, so no state in the Union pays more of its ordinary revenue in proportion to its population, or has less of it expended among themselves than ours. But in addition to the calamitous catastrophe to which such a state of things points, as the magnet to the pole, we have to encounter the still more withering influence of that universal passion among mankind for land, which, transfers to the public treasury every dollar that can be commanded, sends them out of the State to be expended abroad, deprives us of the advantages of a circulating medium, and subjects us to all the inconveniences, evils and calamities that can result from the want of it.

And when may we look to an end of grievances so intolerable?—Let the vast extent of the public domain claimed by the United States answer. The whole amount is estimated at 1067 millions of acres, of which, 317 millions are within the limits of the present States and Territories. These alone would, according to the average quantity annually sold since the opening of the General Land Office, re-

quire upwards of three centuries to dispose of them. The quantity within our limits is about 36 millions, the entire sale of which, could not, according to the ratio of sales that have been made since the opening of the land offices in this state, and while the best selections were to be made, be effected in less than 288 years, and, with a reduction of price to twenty-five cents an acre, would require upwards of fifty-seven years. Dreary and hopeless then, would be the prospect before us, for generations to come, with all the mitigating influence of this reduction of price.

Think not that the present rapid increase of population throughout the Union, by augmenting the demand for lands, will accelerate sales, so as materially to shorten the period of our suffering. This might be the case were there no other public lands than the 317 millions within the present States and Territories. But a mere glance at the vast unpeopled regions of this continent is sufficient to show that, the supply will exceed the demand for them, for centuries to come, and while the sales of our best lands will be constantly adding to the inducements to emigration to the neighboring foreign States before alluded to, Congress might as well forbid the billows of the ocean to roll, or its tides to flow, as to attempt to prescribe limits to the population of the U. S. so long as a spot suitable for settlement, and which can be brought within the pale of civilization, is to be found in the 750 millions of acres of public domain which they claim without the limits of the present States and Territories. But supposing the sales to progress in proportion to the augmentation of population, this would only increase the drain of our money, and the sooner exhaust it.

Having no documents at hand to show, and no recollection of the annual amount of receipts into the land offices of this state, except for a period of about two years, it is impossible to speak with absolute certainty in regard to that matter. The amount however, received from the sale of public lands, during those two years, which were probably as unfavorable to sales as any that could be selected, averages about $110,000 per annum. Since then our population has tripled itself. If then, sales are to keep pace with the ratio of the increase of population, and the latter continues as it has been, for only twenty years longer, the annual drain of money from the state, in the course of that short period, must regularly augment from $330,000 to the enormous amount of $2,970,000. No argument can be necessary to show that, the state, if ever so much disposed to submission, could not withstand an operation so impoverishing and ruinous. As the great Mississippi itself would cease to flow, but for the friendly winds which return its waters from the Ocean to the mountains, and replenish the fountains that supply it, so such a continual drain of money, which never returns among us, would ultimately dry up all the sources of our prosperity.

But supposing the sales to bear no greater proportion to the increase of population than they have done, for several past, what then is to be the consequence? An immense body of our augmenting population must go without lands, or be driven to seek them from the superior munificence of other governments. Whether therefore, the sales be as-

creased, retarded, or remain as they are, injustice, greater than any colonial oppression which the present enlightened times have ever witnessed in Europe or America, must be the inevitable result.

Why then, should a system fraught with so many present evils, and that leads to such appalling final consequences be continued? Justice, sound policy, the beneficent intentions of the Creator of the world, who made the land for the common benefit of all mankind, and conferred upon every human being a right to a portion of it, all forbid it. And ere long the sufferers, now rapidly increasing, will have become too numerous to render it prudent to persist in a policy that subjects them to such privations and oppression. The system therefore, sooner or later, must, and will be abandoned.

But, besides these enormous grievances, other powers have been assumed by the General Government in relation to the public lands, which threaten to undermine the foundations of the sovereignty and independence of the state; and to subvert both our civil and political liberties. Of these, is that which has established the relation of landlord and tenant between the United States and our own citizens. Declining to sell, the United States, claim and exercise the power of leasing out the whole mineral section of the state, thereby introducing a population among us, dependent upon themselves, who have already been numerous enough to decide all our general elections, and may ultimately be the means of controlling our most important municipal affairs. Divided as we have been upon the great question of slavery, the population of the mineral country might, several years ago, have given a decided preponderance to the one side or the other, and nothing could have been easier than for the General Government, or even the executive branch of it, to have commanded the requisite unanimity by means of the influence which a dependance for the liberty of prosecuting their business, and even of occupying the humble cabbins that shelter them and their families from the pitiless storm, given it over such a population? With such means at command, there is nothing to prevent its deciding for us any other great question of national or state policy, upon which, an ordinary division of public sentiment may prevail. Indeed, it requires but a further exercise of this power of leasing to subject our properties, liberties, and lives, to the uncontrolled domination of the mere dependents, and tenants at the will, of a government that never was intended to have any agency in our local affairs. And what is to secure us against these dangers? As all the power which Congress have over the public lands is derived from a single clause in the constitution that makes no discrimination between them, it follows that, there is the same authority to lease the whole, as any part, of the public domain within our limits. The precedent therefore, of leasing a part, dangerous under any circumstances, is the more to be deprecated from the tendency of the present unfortunate state of things to increase the practicability of leasing much more, if not the whole. For, operating, as the present land system does, to render our fellow-citizens unable to purchase lands, it can scarcely fail to coerce corresponding dispositions to submit to the odious necessity of becoming

dependent tenants of the general government; and thereby, to facilitate the means of giving to this precedent an extent utterly incompatible with our security. Let it not be said that, there is no danger of this alarming exercise of the power in question.—To quiet a numerous, restless, and discontented population, unable to buy lands, or to do without them, but willing to take leases, may be thought to furnish as good ground for future leases, as any that can be alleged in favor of those that have already been made.

The precedent, however, has already been carried too far to authorise any safe calculations upon forbearance, and may teach us how frail is the tenure of our rights, if they are to depend upon the mere courtesy of a people, politically distinct from us, and interested in making all that is practicable out of those lands.

Anticipating the results which have been subsequently realized from this dangerous assumption of power, and believing that it ought to be promptly opposed, or counteracted by all constitutional or legal means, I felt it my duty, four years ago, to call the attention of the legislature to the subject.—Since then it has been gradually assuming a more and more fearful aspect. Advancing from one encroachment to another, this action of the general government has been extended from leases to diggers and smelters of mineral, to revocable permits to agricultural tenants, by which the number of its dependents of the latter description has probably been multiplied even beyond that of the former; and now we are threatened with the establishment of a complete *imperium in imperio* within the limits of our own state.

At the last session of Congress, a bill was reported to the House of Representatives, where it is still pending, "To authorise the President to appoint a Superintendant and Receiver at the Fever River Lead Mines, and for other purposes," which, among other things, requires those officers to report to the President "such alterations in the manner of **GOVERNING** and leasing said mines as may to them appear necessary for the better security of the interest of the Government," and inpowers the President "to prescribe such rules and regulations for the *Government* of the said officers and mines, leasing and surveying the mineral grounds, licensing smelters, AND FOR PRESERVING THE PROPERTY OF THE UNITED STATES *as to him may appear necessary and proper.*"

Though this project, by the concentration of so much power in the hands of any one man, violates all the acknowledged principles of well regulated liberty, and has no parallel in these United States, nor even in Great Britain, since its emancipation from the misrule of the Stuarts, it would probably have passed at the last session of Congress, but for the want of time, and there is reason to fear will still become a law, unless prevented by your interposition.

As submission to one encroachment invites to others, it seems to have been inferred from the supineness and indifference with which we have regarded the establishment by the United States of a great manufactory of lead within our limits, that, as diggers and smelters of mineral require subsistence, we could not be so unreasonable as

to object to agriculture, as a necessary auxiliary to mining operations? and that, having yielded both these points, we would readily surrender our jurisdiction over a country and population whose absolute dependence upon another Government, can only render them dangerous to our own.

But should all these usurpations be tamely submitted to, what then may we not expect? Let it be remembered that, the United States claim about seven eights of the territory included within our limits. As then, Congress have precisely the same power over the whole, as any part of this domain, they have the same authority to empower the President "*to prescribe rules and regulations* for the GOVERNMENT" of the whole, as the mineral part of it; the same right to authorise him to prescribe such rules and regulations "*as to him may appear necessary and proper*" FOR PRESERVING THE PROPERTY OF THE UNITED STATES" in all and every other part of the state, as at the Fever River Lead Mines. To yield the principle, therefore, in reference to the latter would, be to invite its application to seven eights of the state, and in this case, our chances of resisting any oppression to which the United States might think proper to subject us, besides, the vast external means of coercing our submission, would be, within our own state, but as one is to seven.

The nature and extent of the authority thus attempted to be conferred upon the President, may be inferred from the various and extensive legislation which the grant to Congress of power "to make all needful rules and regulations concerning the territory and other property *belonging* to the United States," has been construed to authorise. The grant to him being equally ample and unrestricted, he of course might do any thing which they have rightfully done, or may do. He therefore, in addition to many other penal enactments, might, as Congress have done in reference to the public lands, forbid any intrusions into the mineral section; annex even the penalty of whipping to the violation of his orders; and authorise his own agents to try the accused, and inflict the punishment; *provided these regulations should appear to him necessary and proper* FOR THE GOVERNMENT OF THE MINES, OR THE PRESERVATION OF THE PROPERTY OF THE UNITED STATES.

Admonished, as we are, by such extravagant pretensions to guard against the dangers which they threaten, it becomes us to inquire into the power of the United States to subject us to them, and to look to our own means of counteracting it.

Let us then endeavor to ascertain whether the United States have the power to lease the public domain within our limits; or retain any sovereignty or jurisdiction over it.

As all powers not delegated to the United States *by the constitution*, nor prohibited *by it* to the States, are reserved to the States respectively, or to the People, so the powers in question cannot be exercised by the United States unless the grant of them is to be found *in the constitution*. Where then, is the delegation of power to the United States to establish the relation of landlord and tenant between themselves and the citizens of any State? or to create and regu-

late manufacturing establishments within its limits? No such delegation is to be found *in the constitution*, and therefore the exercise of these powers is an usurpation: For which, the only clause in the constitution that can furnish the lesat apology, is in the following words: "Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory and other property *belonging* to the United States, and nothiug in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular State."

As to this clause, it might be sufficient to say, that, the Supreme Court of New York, whose decisions are entitled to the highest authority, have decided that *it* "is clearly adapted to the territorial rights of the United States, *beyond the limits or boundaries of any of the States*, and to their chattle interests," and of course, that it recognizes no right to, nor authority over any land within a state—(See 17 Johnson's Rep. 223. If this decision be correct, it annihilates every claim of the United States to the public lands within the limits of a state, since there is *no other part of the constitution* that delegates power to the United States to sell, rent, or otherwise dispose of lands so situated, nor that *prohibits* the state in which they lie from disposing of them at its pleasure.

But supposing this decision erroneous, and admitting the domain in question to belong to the United States, still it is contended that this clause confers upon Congress no power to violate the sovereign rights of a state; or to endanger its security, by introducing a dependent tenantry, and establishing and regulating manufactories within its limits. However various and multiplied may be the definitions which astute philology, or diplomatic ingenuity may give to the phrase "*to dispose of*," as applied to the public lands, every circumstance attending their early history, clearly shows that, it was intended to convey no other power than to sell, transfer, and part with them, for the purpose of accomplishing the objects for which they were ceded. It would be a waste of time to refer to all the facts which testify that this was its cotemporaneous construction. So numerous and conclusive are they, that it would seem impossible to believe that any other use of those lands ever entered into the contemplation either, of those who sought, or of those who made the surrender of them.—All the States which contended that the Crown lands, having been acquired by the common blood and treasure of the United States, should be considered common property, agreed that they ought to remain subject to the jurisdiction of the states in whose limits they were included, and insisted only that they should be sold to raise money to defray the expenses of the war. To effect this very object, and thereby to quiet the discontents that prevailed, Congress, by their

resolution of the 10th October, 1780, solicited a cession of these lands, and promised that, *they should be disposed of for the common benefit of the United States, and be settled, and formed into distinct republican States, which should become members of the Union, and have the same rights of sovereignty, freedom, and independence, as the original States.* Virginia acceded to these propositions, and included them in her deed of cession as conditions thereof, which, having been accepted by Congress, added new objects that required the sale or transfer of the lands, and imposed an obligation so to dispose of them.

This power "to dispose of" the public lands, is not to be considered an isolated one, without specific objects, and to be exercised with an undefined discretion; but, being connected with other still more important powers and duties, with which it was intended to harmonize, it must receive such a construction as is consistent with the obligations they impose.

As then the cession was made by Virginia upon the express condition that the ceded lands should be so disposed of as to raise revenue; settle the lands; form distinct republican States; and admit them into the Union with the *same rights of sovereignty freedom and Independence as the original* States, it follows that, the power now in question authorised no disposition of these lands, but such as should equally regard all these objects: and this, could only be done by selling, transfering, or parting with them.

The cession by Virginia, and its acceptance by the United States, constituting a compact between sovereigns, much might be said of the absolute obligations of the latter to perform all their stipulations, and of the consequences of their refusal or failure to do so. But it may be sufficient to remark that, as we were by express stipulation entitled to admission into the Union "*with the same rights of sovereignty, freedom and independence, as the original States,*" and have been "*admitted into the Union on an equal footing with the original States, in all respects whatever,*" the United States can do nothing within our state which they may not constitutionally do in any other; and that, having no power to hold any lands within an original state, without its consent, nor even with its consent, but for the erection of forts, magazines, arsenals, dockyards and other needful buildings," it cannot be believed that, it ever was intended to delegate to them power to execute those magnificent projects of leasing, and manufacturing within a new State, against the wishes, or even with the consent of its legislature.

Our admission into the Union with boundaries which they agreed to, the opinions expressed and acted upon by the present Administration, and both houses of Congress in regard to sovereign rights of new, as well as old States, and the unqualified admissions of our sovereignty over the public lands within our limits, by all the ablest opponents of our right to the soil, render argument unnecessary to show that the United States have no more jurisdiction within our state than in any other.

Our own jurisdiction then, being co-extensive with our limits, and including the mineral section as well as every other part of the State, gives to us the exclusive right of governing that section, and affords ample means of counteracting the unwarrantable usurpations in question. And this, without any other interruption to the public tranquility than such as may arise from more legal contests, which, happily for us, must be tried by *juries of the vicinage*. Sovereignty says Vattel, is that public authority which commands in civil society and directs what each is to perform to obtain the ends of its institution, and is in its nature one and indivisible. The state holding this high authority has, according to this author, the exclusive right to exercise justice in all the places under its obedience, and take cognizance of all crimes committed, and all differences that arise within its limits. According to the opinions of the present Administration, and both houses of Congress we, like Alabama and Mississippi, had the unquestionable power to extend our laws over, and governthis part of our state, even while it belonged to the Indians, and surely our authority to do so cannot be lessened by their subsequent cession to the United States, since, to say the least, they could not convey to others, greater rights than they themselves possessed? If therefore, the United States own those mineral lands, having no power to legislate for them, they can only hold them as *useful domain*, subject to our laws, and without any other protection, than such as they afford. It is obvious therefore, that, but for our own laws, they could neither enforce their contracts of lease; nor coerce their rents; nor prevent any individual from digging and smelting mineral, when and where he could find it, at his own pleasure.

Upon this view of the subject, the power of taxation, penal enactments, and other obvious constitutional measures, very naturally present themselves as effectual means of protection against all the dangers of those unauthorised assumptions of the general government. But as the state has not hitherto particularly complained of them, either by its legislature, or its representation in Congress, a milder course seems to be demanded by a very proper spirit of forbearance and moderation. While therefore, I would not at present recommend any measures that would bring the authorities of our own state, and those of the United States into direct conflict, it appears to me that every dictate of prudence, justice to our fellow citizens, a due regard to self preservation, all forbid that, the state should gratuitously lend its own aid to operations so unpropitious to its security and prosperity. I therefore, unhesitatingly and fearlessly recommend the repeal of all, and every law of the state, common, or statute, that authorizes an action upon any contract for the rent of, or for any trespass committed upon any lands, which shall not have been listed for taxes, as the lands of individuals are, by the laws of the state, required to be. And this, I do, not from my unfriendly feeling towards our sister states, but with a view to results which will either induce the United States to abandon the power of leasing and manufacturing, as now exercised by them; or produce such investigations as, I think, cannot fail to eventuate in the acknowledgment of our rights.

Deprived of the protection of our laws, and without legal means of preventing any one from digging and smelting mineral, their great establishment would soon wither and perish, since, few would pay rent for lands which they could as safely occupy and use without doing so. In this state of things, the United States would have to choose between three alternatives. 1. A forbearance to exercise the questionable power under consideration. 2. A forcible removal of individuals occupied in the manufacture of lead. 3. A law of Congress to protect the manufactory in their hands. The 1st. would be equivalent to an acknowledgment of the validity of the objections to their carrying on such operations within the limits of a free, sovereign, and independent state. The 2d. would bring up the question whether the executive department of the government has a right *ri et armis* to dispossess an individual under the protection of a state, whose laws forbid force on all such cases. The 3d. as it would not be submitted to, without a legal adjudication, would afford the means of ascertaining whether there can really be too distinct and equal sovereigns over the same territory, which has hitherto been considered a political absurdity. While the two last are not to be dreaded in any event, so long as we retain the right of trial by *a jury of the vicinage*, there are good reasons to hope for the first; for, besides the encouragement to be derived from the concurring decissions of the President and Congress, in the cases of Georgia, Alabama and Mississippi, before alluded to, his conditional approval of the bill for making a road from Detroit to Chicago, indicating his opinion that the United States have no power to make a road even *through their own lands*, where they lie within the jurisdiction of a state, without its consent, authorizes the belief that, upon a review of the present case, he would be disposed to discontinue operations infinitely more dangerous and objectionable, and without the semblance of constitutional authority to justify them.

But should all these views be erroneous, the very important inquiry still remains, whether the lands in question belong to the United States. I will endeavor to shew that they do not. And this, upon additional grounds to those heretofore urged in support of the right of the state to all the public lands within its limits. My argument upon the general question, addressed to your immediate predecessors, remaining, as is believed, unanswered, if not unanswerable, will not be repeated on the present occasion. A passing notice, however, of the grounds upon which its conclusions have been denied, may relieve the present question from some extraordinary misapprehensions that have prevailed, in regard to the former, and which apply equally to both.

To shew that we cannot claim the public lands within our limits, in virtue of our sovereignty, it has been said by an honorable Senator in Congress from Tennessee, and with less wonder at his mistake, than that it should have gone uncontradicted, "that the very same act which creates our sovereignty (doubtless meaning our Constitution) secures the title of those lands to the General Government." Assuming this fact, he emphatically asks "what justice, then, could

there be in these new states saying we will enjoy all the benefits and advantages accruing to us from a *solemn compact* with the General Government; but will not comply with the stipulations on our part." Now, this argument yields the right we claim, but for the supposed compact. Well, then, *we never made any such compact;* and were admitted into the Union as a free, sovereign, and independent state, without one word in our constitution that restricts our rights, as such, to the public domain. The honorable gentleman's mistake probably arose from his proximity to and better acquaintance with the states that have been formed out of the cession made by Georgia. Finding that they had made those "solemn compacts" he must have inferred from that circumstance, that we had likewise done so. The case of either of them, is sufficient to illustrate the difference between them and us. Take, then, that of Mississippi, the eldest of the two sisters. By the act of Congress authorizing her convention, and providing for her admission into the Union, it was, *in addition to every thing demanded of us*, expressly required, as a condition of admission, "that, the said Convention shall provide by an ordinance irrevocable without the consent of the United States that the people inhabiting the said territory do agree and declare that they forever disclaim all right or title to the waste and unappropriated lands lying within the said territory, and that the same shall be and remain at the sole and entire disposition of the United States—and that no taxes shall be imposed upon lands the property of the United States."

Her convention accordingly made the required ordinance, and incorporated it with her constitution, in which, among others, are the following stipulations: "This convention for and in behalf of the people inhabiting this state do ordain, agree and declare, that they forever disclaim all right or title to the waste and unappropriated lands lying within the state of Mississippi, and that the same shall be at the sole and entire disposition of the United States; and moreover——that no taxes shall be imposed on lands *the property* of the United States."

Now, nothing of this kind was required of us, nor have we ever, in any way restricted ourselves by *such stipulations*. And if such a compact was necessary to bind Mississippi, will it be contended that, we are equally bound without any compact at all?

There are other very important distinctions between these states and ours. The Ordinance of 1787 did not equally bind them and us. So far, at least, as it was repugnant to the compact with Virginia, it was void, as to us, but might be obligatory upon them by express agreement. It will be recollected that, at the time Virginia made her cession, there was a numerous and wealthy population within our present limits—all citizens of Virginia, owing to her allegiance, and entitled to her protection; and whom, therefore, she had no more right to dismember from the state, and transfer to another government, than the citizens of her counties of Loudoun and Fairfax. Vattell, the very author whom our opponents quote, says: "A nation ought to preserve itself, it ought to preserve all its members, it cannot abandon them, and it is under an obligation to them of main-

taining them in the rank of members of the nation. It has not, then, a right to traffic with their rank and liberty, on account of *any advantages* it may promise itself from such a negociation. They are united to the society to be its members; they acknowledge the authority of the state, to promote, in concert, their common welfare and safety, and *not to be at its disposal, like a farm or an herd of cattle.* But the nation may lawfully abandon them in a case of *extreme necessity*, and it has a right to cut them off from the body, if the public safety requires it."

"But this province or this city thus abandoned and dismembered from the state is not obliged to receive the new master attempted to be given them: the people being separated from the society of which they were members, they resume all their rights, and if it be possible for them to defend their liberty against him who would subject them to his authority, they may lawfully resist him." (Page 177–8.)

It was doubtless from the obligations which these universally acknowledged principles imposed, as well as from other benevolent and political considerations, that Virginia so particularly stipulated that, we should be admitted into the Union—not shorn of a single attribute of sovereignty—not humiliated by dependence—not degraded by inferiority—not deprived of any right which we should have enjoyed in common with herself had no dismemberment taken place, but, with the *very same rights of sovereignty, freedom and independence as the original states.* This stipulation, if good for any thing, at least included and secured to us, the same right of ultimate domain, within our limits, that Virginia retained within her own, which is all that my present purpose requires to be established.

Though the people so dismembered and transferred were not bound to submit to the new sovereign, yet they might do so—and the moment they yielded an express or tacit consent to the compact of cession, they became parties to it, and acquired vested rights to all and every thing stipulated in their favor, of which, they can no more be deprived, than the people of Louisiana of the rights secured to them by the treaty with France, which ceded that country to the United States

Their consent also subjected them to all authority which, as a consequence of the terms of cession, could be lawfully exercised over them, and *no more.* It warranted no usurpations. In giving it they must be presumed to have taken into view the powers both of the government that transferred, and that which received them, and in submitting to a government of specified and limited powers they subjected themselves to no undelegated authority. When then, had the United States a right to govern them? Never till their admission into the confederation; and then only as a member thereof. Why so? Because no such power was delegated to them by the articles of confederation, and these restricted their authority to the powers *expressly* granted. How then were they governed? Cut off from Virginia, and owing no other allegiance or submission to the United States than they had previously owed as citizens of Virginia, they had a right to govern themselves; and were in the mean time entitled by

the terms of cession to the same protection from the United States as Virginia herself. As citizens of Virginia, which the cession acknowledges they were, they had vested rights and privileges. By what authority then, could the legislature of Virginia disfranchise them? By that of the constitution of this state? But this was intended to secure those rights and privileges, and all who had submitted to its authority, were entitled to its protection. How then could the United States do it? Under the articles of confederation? But these gave no such authority, and were intended to protect the rights of all and every citizen of each state in the confederation, so far as they had cognizance of them. If this monstrous power of degrading the citizens of a free sovereign and independent state to colonial thraldom, without their consent, or any other act of theirs to justify it, may be exercised over a population of fifteen or twenty thousand, why may it not be extended to one half or any other number of the citizens of any state in the Union? The principle is the same, however few or many its victims.

The powers of the United States are far greater and more national under the present constitution than they were under the confederation, yet it will not be pretended that they could govern the District of Columbia, though ceded to them by the states of Maryland and Virginia, but for that clause in the constitution that specially authorizes them to do so. The Legislature of Virginia could not, with the consent of every state in the Union, transfer the county of Fairfax, which adjoins the district, to the United States, and subject the citizens of that county to their authority; nor could the United States, with all their enlarged powers, receive such a transfer. What then gave the legislature of Virginia greater power over her citizens in the organized county of Illinois, than it now has over those of the county of Fairfax? And how did the transfer of the former, give to the United States then more power to govern them than a transfer of the latter would now give? A delegation of power for such purposes, was as necessary then, as now, and none having been granted, the ordinance 1787 was therefore, as to us, unauthorized, unconstitutional and void.

But supposing all this reasoning to be utterly fallacious, will it be contended that the article of the ordinance which assumes to restrict the power of the new states over the public domain still governs us? Besides its absurdity, this is a dangerous doctrine to our opponents, and may eventuate in showing that, if we have lost that opportunity, Michigan Territory, if she will only wait till her population amounts to 60,000 may become a state, with the right to decide for herself, whether she will join the present Union or not—which would seem to be the case, unless indeed, one contracting party can voluntarily disqualify himself for enjoying a particular benefit contracted for, and allege this matter as a valid ground for withholding from the other party, who has been in no default, what he would otherwise be entitled to.

This article is one of those which the ordinance declares "shall be considered as articles of compact between the original states, and the

people and states in the said territory, and *forever remain unalterable unless by common consent*," and reads as follows:

"The said territory and the states which may be formed therein shall *forever* remain a part of *this* (not a different) confederacy of the United States of America, subject *to the articles of confederation* (not to the provisions of the new constitution) and to such alterations *therein* (not to an entirely new and different form of government) as shall be constitutionally made (not made contrary to the constitution) and to all the acts and ordinances of the United States in Congress assembled *conformable thereto* (not contrary thereto.) The inhabitants and settlers in the said territory shall be subject to a part of the federal debts contracted or to be contracted (by the confederation of course) and a proportionate part of the expenses of government to be apportioned on them by Congress according to the same common rule and measure by which apportionments shall be made on the other states, and *the taxes shall be laid and levied by the authority and direction of the legislatures of the district or districts or new states* (not laid by congress upon individual citizens and collected by United States' marshalls) as in the original states within the time agreed upon by the United States in congress assembled. The legislatures of those districts or new states shall never interfere with the primary disposal of the soil by the United States in congress assembled (under the confederation of course) nor with any regulations congress may find necessary for securing the title in such soil to the bona fide purchaser. No tax shall be laid on the property of the United States," &c.

Now this article may produce some embarrassment and difficulty to the United States, but none to us. It would seem from the *words* of the constitution that, they may still execute their part of it, but as this would produce an extraordinary anomaly in our government, it is probable the *words* will have to yield to what they may choose to consider the general *spirit* of the constitution. It is very clear that the article includes *engagements entered into before the adoption of the constitution* which, if of any validity at all, *were valid under the confederation*. What then, says the constitution? "*Engagements entered into before the adoption of the constitution* shall be as VALID against the United States under this constitution, *as under the confederation*." Leaving them to adjust this difficulty in their own way, and not doubting that it will be wisely disposed of, it is enough for our purpose that, it gives them no power to force us into a new bargain; or compel us to take one thing as an equivalent for another; but leaves us at full liberty to insist upon a specific performance of the compact, according to the letter and intention of both parties at the time of its execution; *or to an entire release from our supposed engagements*.

It is obvious, however, that, if this article had any obligatory force upon us, it only subjected us to the authority of the confederation, and that, having been annihilated, without our participation or consent, we of course are free from all and every responsibility so imposed upon us. But suppose we are still bound, by this article, the United States cannot be less so. If then, they refuse or fail to comply with

their part of it, they have no right to insist upon and enforce the performance of our part. For all engagements in a compact have the force and nature of reciprocal promises; and we have the authority of Grotius, Vattell, and others for laying it down as an undeniable principle that, the failure of one party in any one of his promises, authorizes the other to break the whole, and free himself from his engagements.

What then was promised us by this article? Among other things, an equal vote in Congress with the great state of New-York; a subjection to such authority only as the Confederation could constitutionally exercise over us; and the laying and levying of all the taxes that Congress could demand of us, *by the authority and direction of our own legislature.* Now, the United States have not performed one of these stipulations, nor will they do it. Are we then bound to be satisfied with less? If so, the declaration, covenent and agreement, that, this article should "*forever remain unalterable unless by common consent,*" was a perfect nullity.

Could the United States destroy the union we agreed to join, thereby putting it out of our power to do so, and then take advantage of their own act to deny us, on that account, whatever else we were entitled to? This would be reversing an established rule of law, and violating the plainest dictates of justice. If then, such a state as ours be of any advantage to them as a member of the Union, they have cause to congratulate themselves that they did not loose it altogether, and the public lands with it. For, had we waited a little longer, we might have become a state, with all the rights of sovereignty, freedom and independence that any of the original states possessed, under the confederation; and with an equal freedom to accept, or reject, the new constitution. Had we refused to join the new Union, we should not have been subject to its authority; and would have held every right which an original state could have retained by a refusal to ratify the new constitution.

Why may not Michigan territory adopt this course? She is in no present default, and is willing to perform all her stipulations so far as the United States have not put it out of her power to do so. She has a right, under the compact with Virginia, to become a state, equal in all respects whatever, with any of the original states. Can the United States prevent her from assuming that character and how? By a law forbidding her to do so? But this would be to violate engagements which the constitution has declared to be valid, and required to be fulfilled. She wants no law of congress to authorise her to form a state government, for by one of those very articles of compact, which it was stipulated should be *unalterable unless by common consent*, it is already declared that whenever she shall have 60,000 free inhabitants, she "*shall be at liberty to form a constitution and state government.*" It is evident, therefore, that there exists no power to prevent her becoming a state. Well then, she has assumed that character, how is the domain within her limits to be secured to the United States, by a compact for admission into the Union, the only means hitherto found out of preventing its becoming

"*a necessary appurtenance*" of independence. She will neither join the Union, nor make a new compact of any kind, and cannot be compelled to do either. What then becomes of the public domain? The United States have no greater claim to it than the Crown of Great Britain. It is lost to the former precisely as it was to the latter, by by the *independence* of the state in whose limits it is included.

We have seen what rights were expressly stipulated for in favor of the new states. Let us for a moment endeavor to ascertain whether fewer or inferior ones were intended to be granted. It has been decided by the supreme court of a neighboring state, and no doubt correctly, that "It is certainly a well settled rule that the law at the time a contract is made composes a part of it" (2 Bibbs' rep. 203.) And why? Doubtless because, the parties must be presumed to have had it in contemplation as the means of ascertaining and securing their respective rights. So in contracting for admission into the Union, the articles of confederation as they then existed must, upon the same principle, have constituted a part of the contract; since they alone could show what was intended to be granted; or expected to be received. Nothing, therefore, is clearer than that the new states were entitled to all the rights they would have had, had they been admitted into the Union, before the adoption of the new constitution. What then would they have been entitled to in this case? Perfect equality in all respects whatever, for those articles admitted of nothing less; equal powers, security, and protection, within their limits; equal exemption from all authority that could not be exercised consistently with the second article of the confederation; which declares that, "Each state retains *its sovereignty, freedom and independence, and every power, jurisdiction and right which is not by this confederation expressly delegated to the United States in Congress assembled;*" and the same right to the public domain within their limits, as any other state could claim under the 13th article, which declares "that, *no state shall be deprived of territory for the benefit of the United States.*"

Thus it is seen that, they contracted to join a confederation which, after their admission as members thereof, could not dispose of a foot of the public domain within their limits for the benefit of the United States; nor "exercise any power, jurisdiction or right over it." What better title could they desire for all the public lands, unsold at the time of their admission? That, this was the intention of Virginia is plainly to be inferred from her subsequent conduct towards Kentucky. That magnanimous state never did intend that the infant and feeble members for which she provided with such benevolent circumspection should be kept in political leading strings, and there present degrading dependence upon the general government, for probably more than a century yet to come. And the journals of congress as well as the ordinance of 1787 show that, the extraordinary claim now set up of ultimate domain to Indian lands, within the limits of any state, had not then entered into the conception of the United States.

The new states would have had the same rights as the original ones

to reject or ratify the new constitution. What claim then would the United States have had to the public lands, within their limits, in either case? Had they rejected, they would have been without the limits and jurisdiction of the United States, and as much a foreign state as Canada or Great Britain itself. How then could the United States have disposed of these lands? By a law of Congress? But the constitution gave no power to govern, or make rules and regulations concerning territory without the limits of their jurisdiction; and the law of nations forbids it. Suppose then that the new states had ratified the constitution, would this have divested them of any rights that accrued to them, upon their admission into the confederation, which every other state did not equally concede? Certainly not, because, the constitution recognizes no difference between the states, and contemplates the same rights and security for all and each of them. The new states, therefore, would have gone into the Union with all the right to the public domain which they had acquired as equal members of the confederation; for the moment the right accrued to them, it passed out of the United States, and was then as perfect as twenty or one hundred years uninterrupted enjoyment could have made it.

But the new states did not become members of the confederacy. What then? This only proves that they did not enjoy the rights that were intended for them—not, that they were not entitled to those rights; or that, they could be held bound to join any other union than the one they contracted to join; or to submit to the authority of any other government than the one they had agreed to submit to. If this might be the case, then they were bound to submit to any one or more governments according to the will and pleasure of Congress. They and their territory might have been partitioned and distributed among the different states of the Union, to be at their disposal "*like a farm or an herd of cattle.*" But in this case how would the stipulation of the United States to form them into states with specified boundaries be disposed of? The new government was to go into operation, upon the ratification of the constitution by any nine of the states, suppose then, nine only had ratified, and the other four had rejected it, how would the territory then have been disposed of? To which party would the people thereof have owed their allegiance? From which, would they have had a right to demand that protection which was stipulated as a condition of the cession? Two independent unions were seriously contemplated, suppose that project had succeeded. In this case the United States as a nation would no longer have existed, and the people of the territory owed allegiance to no other. How then could they and their lands have been disposed of? By an equal division between these two independent unions? But this would have been contrary to that condition of the cession which declared that those lands *should be considered as a common fund for the use and benefit of the United States and be faithfully and bona fide disposed of for that purpose and for no other use or purpose whatsoever*, and, in the meantime, these two independent unions might have become hostile and belligerent nations. Besides, such a division would have severed

territory which, by the compact, was to be formed into a single state. A variety of other cases might be supposed to show the unreasonableness of a pretension on the part of the United States to hold public domain, within the limits of states as free, sovereign, and independent, as any one of them. These cases, however, have been particularly alluded to because they have all, at one time or other, been treated as practical and expedient projects, and ably supported as such.

Were more upon this subject necessary, it could be shown, as it probably will be hereafter, 1st. that the *legislature* of Virginia had no power to cede the territory in question to the United States. 2d. That the latter had no power to hold it. 3d. That they had no power to dispose of or govern it; and 4th, That the ordinance of 1787, *as an act of the congress of the confederation*, was null and void.

The present crisis indeed demands the strictest investigation of every ramification of this great subject, upon fundamental principles, but, as this is not my present purpose and would probably occupy more of your time than might be desirable I will content myself with barely presenting these several points as subjects for future consideration.

As the first has already been partially noticed, the less need now be said. Whatever the people of Virginia might have done in their sovereign capacity, it is contended that, their legislature had no right to dismember the state, and curtail its jurisdiction. And why? Because, no such power had been delegated to them by the constitution of the state, and it could be derived from no other source. Theirs was the power of legislating for the whole state, as it then stood, and was intended to be exercised by them and their successors forever. For what end? For the preservation and security of the whole territory, and all its inhabitants. To suppose then that, they could transfer any part of the state, or its jurisdiction, is to admit their power to annihilate rights as effectually secured to their successors, as to themselves; and to destroy the whole ends and objects and their own institution. For, if they could dismember a part, they might have transferred the whole; and as to the question of power, might as well have surrendered it to the King of Spain, who, about that time, was very anxious to obtain a part, as to the United States.

What right then, it may be asked, had the legislature of Virginia to cede that portion of the territory which is now included within the District of Columbia? The question is easily answered. It was derived from the constitution of the United States, and its ratification by the convention of the state; and the admitted necessity of a clear delegation of power to authorize that cession, is, of itself, a good argument to show that, nothing less than such authority, could authorise any other. As it is agreed on all sides that, Virginia cannot now transfer to the United States an acre of her territory, except for certain purposes specified in the constitution, it is for those who contend that the cession under consideration was not a perfect nullity, to show how her legislature then had greater power to dismember the state, than at present.

As to the right of the United States to hold, dispose of, and govern

had any claim to their obedience, they were of course independent, and within the country which had thus been excluded from the limits of Virginia, they had the rights both of domain and empire; since these could not be claimed by any other state or nation. But it may be said that, if the cession by her legislature was unauthorised and invalid, Virginia might have resumed her rights. This is freely admitted. But then, she did not do so. She in fact abandoned the territory, and its inhabitants, withdrew her own protection, and voluntarily, and without necessity, left them to be governed by a different authority. She therefore, forfeited all right, title and claim, as well of soil as jurisdiction, to the territory thus abandoned. It was upon this very principle that, the Swiss declared their independence and maintained it, with all the rights of domain and empire, against the Emperor of Germany. "The country of Zug, attacked by the Swiss in 1352, sent for succour to the Duke of Austria its sovereign, but that Prince being employed in talking of his birds, when the deputies appeared before him, would scarcely condescend to hear them; upon which, this people thus abandoned entered into the Helvetic confederacy," (Vattell 155) and were rightfully lost to their former sovereign forever, by his failure to afford them that support which, from the reciprocal obligations of allegiance and protection, they were entitled to.

Well then, if neither Virginia, nor the United States had any right to govern these people, and the ordinance of 1787 was void, *as an act of the congress of the confederation*, have they gone all this time without any government at all? Certainly not. They have been constantly governed, and under the ordinance too, but, then it derived its force, not from the authority of the United States, but the consent of the people themselves. Being free to choose what government the pleased, they had as much right to submit to this as any other. Their own consent was all that was wanting, and this was equally valid whether given expressly or tacitly. But however given, it could impart no power, right, or jurisdiction to the United States, which had not been delegated to them by the articles of confederation. Happily for the liberties of this country, they could not then, nor can they now, acquire power in this way. Dreadful indeed would be the situation of minorities if they could. Consent cannot give jurisdiction to a court, and still less to a government prohibited from exercising *any power, jurisdiction, or right*, which had not been *expressly* delegated to it.

The next inquiry which presents itself is as to the validity of the sales which, in the meantime, have been made by the United States to individuals. Some have supposed that, if Virginia lost her title, and the United States acquired none, the sales made by the latter are all invalid. Nothing however, is more erroneous, titles so acquired could be maintained in a court of justice, upon principles that are undeniable. If A. stands by and sees B. convey his land, without asserting his claim, A.'s title is gone. In these cases, the people of the former territory, and present state, who alone had a right to object to those sales, not only, did not assert their claims, but actually consented

the territory, and to enact the ordinance of 1787, they all depend upon the powers delegated by the articles of confederation, and involve the question whether that feeble confederation, which was limited to powers expressly granted, among which these were not included, could do more than the present powerful national union with all its train of incidental powers. It is admitted that, the United States cannot now, even with the consent of every state in the Union, purchase or hold a foot of land within any state, except in the few cases permitted by the constitution; and this, merely because no such power has been delegated to them: and that, they could neither dispose of any part of the public domain; nor make any rules or regulations concerning it; but for the powers that have been specifically delegated to them for these purposes. How then, could they do all these things under the confederation which granted no such powers, and the 2d article of which prohibited them from exercising any *sovereignty, power, jurisdiction, or right*, which was not therein expressly delegated to them? It would seem that, every candid mind must admit that, the exercise of these powers by the confederation was not only unauthorised, but expressly forbidden. And yet, upon this question depends the whole claim of the United States to the lands; and to the power of making governments for, and extorting compacts from us. Whatever their opponents may say, the advocates of strict construction of delegated powers, who appear to be the stronger party at present, must, upon their own principles, admit those acts of the confederation to be *unconstitutional, and utterly null and void.*

It is a fundamental principle that equally applies to all governments of limited and delegated powers that, they cannot act upon subjects that have not been placed under their control, nor exercise greater power upon those that have been, than has been delegated to them. Nothing excepts the confederation from the operation of this principle, more than the present Union, and were it necessary it could be shown that, the ablest commentators upon constitutional law that this nation has produced have considered it as applying with as much force at least to the former, as to the latter. But the principle is too self evident to require illustration. Suppose then, that the powers of the present Union should, by constitutional amendments, be reduced to precisely such as were held by the confederation, could it be contended that the United States could then exercise the powers in question to which they are now incompetent? If not, then surely it must be admitted that, all those acts of the confederation were *null and void.* It follows then, that the United States acquired neither the territory, nor jurisdiction over it, by the cession of Virginia. To whom then, it may be asked, did the territory belong? Like all countries unpeopled or abandoned by their owners, or to which no nation has a particular and exclusive right, it was subject only to the laws of nature and of nations, and belonged to the people that possessed it. They owed allegiance to no other state or nation than Virginia, and were entitled to her protection; and as they could not transfer the right of protection, so neither could she transfer the right of allegiance, when, therefore, they were formally abandoned by the only government that

had any claim to their obedience, they were of course independent; and within the country which had thus been excluded from the limits of Virginia, they had the rights both of domain and empire; since they could not be claimed by any other state or nation. But it may be said that, if the cession by her legislature was unauthorised and invalid, Virginia might have resumed her rights. This is freely admitted. But then, she did not do so. She in fact abandoned the territory, and its inhabitants, withdrew her own protection, and voluntarily, and without necessity, left them to be governed by a different authority. She therefore, forfeited all right, title, and claim, as well of soil as jurisdiction, to the territory thus abandoned. It was upon this very principle that, the Swiss declared their independence and maintained it, with all the rights of domain and empire, against the Emperor of Germany. "The country of Zug, attacked by the Swiss in 1352, sent for succour to the Duke of Austria its sovereign, but that Prince being employed in talking of his birds, when the deputies appeared before him, would scarcely condescend to hear them; upon which, this people thus abandoned, entered into the Helvetic confederacy," (Vattell, 155) and were rightfully lost to their former sovereign forever, by his failure to afford them that support which, from the reciprocal obligations of allegiance and protection, they were entitled to.

Well, then, if neither Virginia, or the United States had any right to govern these people, and the ordinance of 1787 was void, *as an act of the congress of the confederation*, have they gone all this time without any government at all? Certainly not. They have been constantly governed, and under the ordinance too, but, then it derived its force, not from the authority of the United States, but the consent of the people themselves. Being free to choose what government they pleased, they had as much right to submit to this as any other. Their own consent was all that was wanting, and this was equally valid whether given expressly or tacitly. But however given, it could impart no power, right, or jurisdiction to the United States, which had not been delegated to them by the articles of confederation. Happily for the liberties of this country, they could not then, nor can they now, acquire power in this way. Dreadful indeed would be the situation of minorities if they could. Consent cannot give jurisdiction to a court, and still less to a government prohibited from exercising *any power, jurisdiction, or right* which had not been *expressly* delegated to it.

The next inquiry which presents itself is as to the validity of the sales which, in the meantime, have been made by the United States to individuals. Some have supposed that, if Virginia lost her title, and the United States acquired none, the sales made by the latter are all invalid. Nothing, however, is more erroneous, titles so acquired could be maintained in a court of justice, upon principles that are undeniable. If A. stands by and sees B. convey his land, without asserting his claim, A.'s title is gone. In these cases, the people of the former territory, and present state, who alone had a right to object to these sales, not only, did not assert their claims, but actually consented

to the sales, by repeatedly petitioning Congress to make them, and are therefore estopped to allege any thing against them. But the true principle upon which they are supportable is that, they were made in pursuance of the authority of the actual government, which was obligatory on the people, so long as they choose to submit to it. Very different, however, would be the case, should the state assert its claim, and protest against future sales.

The claim of the United States either to the territory, or to the right of governing it, can derive no possible aid from the present constitution. The only clause which this contains, that can be supposed to have the slightest reference to the case under consideration, is, that which gives Congress power "*to dispose of and make all needful rules and regulations concerning the territory* BELONGING *to the United States.* Leaving it to others to show that, a power to dispose of and govern territory actually acquired, gave no authority to make new acquisitions, by the dismemberment of any part of a state in the Union, it is contended that, this clause does not touch the present question; because, these lands did not then nor do they now *belong* to the United States. If the legislature of Virginia had no power, as has been contended, to cede them, no title vested in the United States in virtue of their cession, and none has ever been derived from any higher authority. If that legislature had the power to grant these lands, the United States having none to hold them, the title vested in those who had a right to govern the territory, the then inhabitants thereof. This, may be illustrated by a familiar example. It is a general principle that, aliens cannot hold real estate, yet if lands be granted to an alien, the title passes from the grantor, and immediately vests in the sovereign of the country. So in this case, Virginia could not resume her rights, and there was none to take them, but the people whom she had abandoned.

In every point of view, therefore, in which this subject can be considered, upon fundamental principles, we are entitled to all the public lands within our limits. Recent decisions upon Indian rights show that there is no statute of limitations to bar us; and our rights are not to be invalidated by "*tearing the seal from the bond.*"

As to the ordinance made by our convention, it forms no part of our constitution, and is as distinct from it, as if it had been adopted ten years later. It contains nothing which was made, or intended to be made a condition of admission, but relates exclusively to certain propositions which, as the law for our admission declares, were offered for "*the free acceptance or rejection*" of the convention, and which, if accepted entitled us to school lands, salt springs, and five per cent. of the nett proceeds of the sale of public lands, and if rejected, subjected us to no other consequences whatever, than the loss of the specified advantages which the acceptance of the convention would have entitled us to. That this is its true construction is manifest from the report of the committee of the Senate of the United States which recommended the making of similar propositions to the state of Ohio, and from the arguments used on that occasion; but, the case is too plain to waste your time with useless quotations.

It is evident then, that there is neither in our constitution, nor in the ordinance of 1787, nor in the ordinance adopted by our convention, any compact that imposes the restrictions, which the hon. Senator from Tennessee supposes, upon our sovereign rights. And if there were such a compact it would be a nullity. For if the new states have not a right to those lands, it would be useless; and if they have a right to them, the constitution does not permit the United States to acquire it in any way whatever. Mr. Madison, whose authority on such subjects none will dispute, says "*the only case in which the consent and cession of particular states* CAN *extend the power of Congress are those specified and provided for in the constitution*;" adding that, "the permanent success of the constitution depends on a definitive partition of powers between the general and state governments." Where then, is to be found any delegation of power to Congress to make a compact which will either add to the powers of the United States, or diminish the sovereign rights of any state in the Union, new or old? No such delegation is to be found in the constitution, and I should want no better argument than that of the hon. gentleman from Tennessee himself to prove that no such power can be constitutionally exercised. For, says he, "This government is one of delegated powers, and can only act on subjects expressly placed under its control by the constitution, and upon such other matters as may be necessarily and properly within the sphere of its action, to enable it to carry the enumerated and specified powers into execution, and without which the powers granted would be imperative."

I trust that the honorable gentleman is answered. And knowing, as we all do, and indeed, as his speech shows, his kind feelings towards the new states, it is to be hoped that, upon a review of this subject, we shall have the aid of his talents in endeavoring to procure for them, that appropriate redress of grievances which their situation so imperiously requires.

Again: It has been said "that as the United States once owned these lands, could have sold them before we became a state, and have not sold them, that therefore they still own them." Now this would require no answer at all if I have succeeded in showing that they derived no title from Virginia. But supposing they once held a good title, a short answer is all that is required. Ours is a *title* which independence necessarily confers, a *title* without which independence could not exist, the very same kind of *title* by which, all the original states have claimed the public domain, or ungranted lands within their respective limits. It will not suit their case to refer their rights to the treaty with Great Britain, for that concedes all the lands which the British Crown claimed—not to the individual states, but to the United States of America as a nation. If the title was thence derived it would appear that, the United States have as much claim to the crown lands within their limits, as ours; and as they have never bought or paid for their lands of that description, they would complain of us with a very bad grace for wishing to hold ours upon the same terms. Their title however, accrued to them upon the declaration of independence. It was therefore, a right of independence. If

then, we were entitled, under the compact with Virginia, to *the same rights of independence* as themselves, which the compact expressly provides for, and if we have been admitted into the Union, *on equal terms with them in all respects whatever*, as the resolution for our admission declares, why may we not claim all and every right which *independence* conferred upon them? They were colonies of Great Britain. We a colony of the United States. They declared their own independence of the former. Ours was admitted by the latter. Why then have we not the same right to the ungranted lands, within our limits, that they had within theirs? Nothing in the constitution prevents it, and with the exception of such powers as every state in the Union surrendered to the general government, our independence of the United States surely gave us all the rights which their independence of Great Britain gave them.

This appears to have been the opinion of the late Gen. Smyth of Virginia, an eminent states-man, and profound lawyer, who was probably the first man in the Union that countenanced the claim of the new states to the public domain within their respective limits. In a speech which he delivered in Congress, in February, 1823, he emphatically asks, "Is it certain that, admitting a new state into the Union, on equal footing in all respects with the original states would not vest in the state the domain? Would it not operate like an acknowledgment of the independence of a colony?" This indicating his own strong convictions upon the subject, by placing it in a point of view which he evidently considered unanswerable.

The Crown of Great Britain once owned the ungranted lands within the limits of the original states, could have sold them before they declared their independence, and had not sold them. Did they still belong to the British monarch? Or would any title made by him, after that period, have been deemed valid? Not one of the original states will agree to this. And why? Merely because the right to the public domain vested in them as "*an appurtenance of independence.* The King of Spain owned and might have sold the public domain within all his American colonies before they became independent, but no one will contend that, he had any right to do so after this event, and yet, these colonies never paid him a cent for his title. The United States transferred Texas to him, and notwithstanding he has never parted with his title, they have been very anxious to re-purchase a part of that territory from Mexico, though she never paid any thing for it, and has no other claim to it than such as results from her *independence*, which however he has not acknowledged.

We have been told, as if it were pregnant with overwhelming import, that the sovereignty and soil of a country may belong to different powers—nobody denies this. But the lands which one power can hold in the territories of another, must have been previously separated from the public domain, and reduced to the rights that may belong to any individual in the state. Public domain is destined to the support, and reserved for the use of the government that has authority over it. It as a right that pertains to sovereignty, and cannot be separated from it. Lands which have ceased to be public domain, may

be claimed within the limits of an independent state. But no instance can be shown, in which any nation has ever attempted to claim the public domain, or ungranted lands, within the limits of any other independent state or nation.

Vattell says, "The general domain of a nation over the lands it inhabits, is naturally connected with the empire. Thus we have already observed, that in possessing a country, the nation is presumed to possess at the same time its government. We shall here proceed farther, and shew the natural connection of these two rights in an *independent* nation. How should it govern itself, at its pleasure, in the country it inhabits, if it cannot *truly and absolutely dispose of it?* And how shall it have full and absolute dominion of the place in which it has no command? Another's sovereignty, and the right it comprehends, must take away its freedom of disposal."

Our sovereignty is admitted, eminent domain is an inseparable concomitant of sovereignty, and gives the state, the right, in case of necessity, or for the public good, of disposing of all the wealth it contains. Without the right of eminent domain, we could not even make a road through the lands of an individual. All independent states possess it. Would it not then be extraordinary, that we should have power to take and dispose of the lands of an individual, and yet no right to touch the public domain within our sovereign limits?

But to return to the mineral section of the state, before noticed. The title which the United States have in it, has, with trifling exceptions, been acquired by purchases made by them from the Indians, since our admission into the Union; and is therefore, considered of no validity against the superior right of the state to those lands.

Admitting the right of the United States to all the public lands in the state, to which the Indian title had been extinguished, at the period of our admission into the Union, it is contended that they then had no right to lands *belonging to the Indians*, and could not thereafter, consistently with the constitution of the U. States, or with the sovereign rights of this state, acquire any right to such lands.

It was my intention, as has probably been inferred from some previous remarks, to have discussed this branch of the great subject of the public lands, more particularly than any other; but a painful indisposition, during the whole period allotted to this duty, rendered it impossible to fulfil that intention, or even to revise and copy what has already been written, before my official duties will have terminated. I am, therefore, compelled to present you my views, as they are upon the original rough draft, written, as you will readily perceive from its appearance, with too much haste to be legible, or capable of being copied by any one except myself; or lose the opportunity of addressing you at all in my present capacity.

Under these circumstances, I must content myself with a few brief general remarks upon the present subject. It could easily have been shown, that the whole history of our relations and intercourse with the Indians, from the planting of the first British colony on this continent, down to the adoption of the present constitution, repudiates the doctrine that the United States have a right of ultimate domain to Indian lands *within the jurisdiction of any state*, new or old. The decisions of the Supreme Court of the United States have established that this right belongs to, and may be granted by the several states. If the United States possess it all, they hold it equally in every state, and have the same right to assert it against New-York, as against this state. But they have acknowledged it to belong to all the original states, and cannot, with any semblance of propriety or justice, deny it to the new ones, since these have been admitted into the Union *on an equal footing* with those states *in all respects whatever*.

In joining the Union, which we had a right to do, or not to do, at our own pleasure, we surrendered no more power, and retained as much as any other state. The constitution being the only evidence of the terms of union, and the only authority for the admission of a new member, can alone decide what powers we have surrendered or retained, and equally protecting new and old states, against the usurpation by the United States, of powers reserved to the states respectively, or to the people, admits no inequality among the members that compose the Union.

All the original states, from the declaration of independence, as some of them had previously done while British colonies, have claimed and exercised the exclusive right of extinguishing the Indian title within their respective limits. This right has not been delegated to the United States *by the constitution*, nor prohibited *by it* to the states, and, therefore, it is one of our reserved rights, and might, the moment after our admission into the Union, have been exercised by us, with as much propriety, and under as good authority, as it has, from time to time, been by New-York and other states; because we are as free, sovereign, and independent as any of them.

As to all powers which have not been delegated to the United States *by the constitution*, nor prohibited *by it* to the states, we are as independent of them, as of the Crown of Great Britain; and the latter has just as much right to take cognizance of any of our municipal affairs, as they have. Having acknowledged our independence and sovereignty within limits prescribed by themselves, and which include those Indians, they have divested themselves of all pretensions to jurisdiction over the latter, as much as Napoleon did, by his cession of Louisiana to them, over the

numerous tribes then inhabiting that territory. And as his cession left all conflicting claims to Indian lands to be settled by them and the Indians, so the acknowledgement of our independence and sovereignty by the United States, deprives them of all right to interfere between the Indians within our limits, and ourselves. Whatever rights, therefore, the Indians may have of soil, or sovereignty, are questions between them and us exclusively. The United States have nothing to do with them. They are estopped by their own act to claim any right to interfere, upon the ground that the Indians are an independent nation, even if this be the fact, for having admitted our *independence and sovereignty*, they have no control over our acts, whatever they may be, within the limits of our jurisdiction, and without the limits of theirs. We owe them no responsibility for managing our own affairs in our way. And as between them and us, whatever may be our proper relations to the Indians, we are an independent nation to all intents and purposes, except in so far as the constitution has given them a control over us—and it has given none in the present case.

Mr. Adams the late President, referring to the Indians of Georgia, Alabama, &c. says "We have unexpectedly found them forming in the midst of ourselves, communities claiming to be independent of ours, and rivals of sovereignty within *the territories of members of our Union*. This state of things requires a remedy should be provided, a remedy which, while it shall do justice to those unfortunate children of nature, may secure *to the members of our confederation* THEIR rights of sovereignty and of soil."

The present President in his message of 1829, in reference to the states of Mississippi and Alabama, "says, there is no constitutional, conventional, or legal provision, which allows them less power over the Indians within their borders, than is possesessed by Maine and New York, &c."

"It is too late to inquire whether it was just in the United States to include them, and their territory within the bounds of new States, whose limits they could not control."

And the Secretary of War asserts that, independence gave *the States* a right to soil and jurisdiction against the Indians, as well as Great Britain.

Thus all these great men seem to have looked to, and acknowledged the sovereignty of the states over Indian lands, within their respective limits. As then, sovereignty is an exclusive right, and comprehends the eminent domain which, Vattell says "is every where considered inseparable from it," it would seem from these admissions that, we have the absolute right of disposing of the whole Indian territory, "within our borders," if "the public good of the state requires it. It must therefore, be a monstrous political paradox, if the United States without any sovereignty or

jurisdiction, over Indians and lands so situated, have, at the same time, the exclusive right they claim of buying the latter, and appropriating them to their own use.

In vain may the annals of the world be explored to find a solitary instance of the recognition of a right in any state, or nation to ultimate domain without the limits of its jurisdiction, or within the limits of any other independent state. If then, an entire abandonment by the Indians of their lands, would vest a title to them in us, as the sovereigns of the country, which will scarcely be denied, whence have the United States, any power to deprive us of this ultimate right? or who is to call us to an account for offering any inducements we please, to such an abandonment? No such powers have been delegated by the constitution, and therefore none such exist.

It would seem difficult to distinguish our case in this respect, upon principle, from that of Kentucky. That state and this were both formed out of territory that belonged to Virginia; they were both admitted into the Union through the joint co-operation of Virginia and Congress; they are both new states, as contradistinguished from the states of the confederation; both were entitled to the *same* rights of sovereignty, freedom and independence, both at the times of their respective admissions into the Union, included large bodies of lands to which the Indian title had not been extinguished, and which, therefore, neither belonged to Virginia nor the United States; and yet, while the ultimate domain has always been conceded to Kentucky, the United States seem determined to deprive us of it, by unauthorised purchases from the Indians.

But what is the effect of their purchases of Indian lands so situated? It is acknowledged that, they can acquire no jurisdiction over them, because they themselves have included them within our jurisdiction, and "the principle on which jurisdiction is assumed, does not admit of division." Well then, according to Vattell "the *useful domain*, or the domain reduced to the rights that may belong to a particular person in the state, may be separated from the empire: and nothing prevents the possibility of its belonging to a nation, in places that are not under its obedience. Thus many sovereigns have fiefs and other properties in the lands of another Prince, they therefore, *possess them in the manner of individuals*. The United States therefore, if they can purchase these lands, can only *possess* them "*in the manner of individuals*." And how might individuals *possess* them? Let the Supreme Court of the United States answer. In the case of Johnson and McIntosh, they say, "if an individual might extinguish the Indian title, for his own benefit, or in other words might purchase it, still he could acquire only that title. Admitting their power to change their laws or usages, so as to allow an individ-

ual to separate a portion of their lands from the common stock, and to hold it in severalty, still it is a part of their territory, and is held under them by a title dependent *on their own laws*. The grant derives all its efficacy from their will; and if they choose to resume it and make a different disposition of the land, the courts of the United States cannot interfere, for the protection of the title."

"The person who purchases land from the Indians within their territory, incorporates himself with them, so far as respects the property purchased; holds their title, and their protection, *subject to their own laws*. If they annul the grant, we know of no tribunal which can reverse and set aside the proceeding. So the United States having no sovereignty of their own, to protect lands so purchased, and deriving no protection from our jurisdiction, can have no other security for them, than such as the Indians may choose to afford; nor can a transfer to an individual give him a right to claim any other protection.

If the right to purchase, by treaty, or otherwise, may be defended, on the ground that the Indians are an independent nation, holding both the right of soil and jurisdiction, why may they not purchase the jurisdiction as well as the soil, and traffic off both to some foreign power, as they did Texas, to Spain; or establish an independent government of their own, within limits which they have acknowledged to be the seat of our jurisdiction, and in which, they are bound, by the most solemn sanctions, to guarantee to us all the rights of self government upon republican principles? No reason is perceived which admits of any one of these things, that does not equally authorize them all.

But the constitution gives them no right to do either. For while it recognizes the Indians as inhabitants of the several states, and, under particular circumstances, over which they have no control, permits them to be counted in the census, it authorizes the United States to make no purchases of lands, within a state, from any *inhabitant* thereof, but for "the erection of forts, magazines, arsenals, dockyards, and other needful buildings." And this, only with the consent of the legislature of the state. Even this very limited authority to acquire lands within a state, for purposes so essential to the safety and defence of the country, was regarded by the great Patrick Henry, as dangerous to the liberties of the states. And surely there is no solid reason why this power should not be as restricted in a new, as in an old state. We cannot have an equality of rights with the original states, if we may be subjected to any danger, from which the constitution exempts them. And no construction is admissable which violates this fundamental principle of our Union.

It is a singular circumstance, that the principles and doctrines of the two great parties which now divide the nation, on the sub-

ect of Indian rights, equally tend to the establishment of the position now contended for, and seem to authorize us to expect their joint co-operation in resisting this indefensible claim on the part of the United States.

On one side, it is contended that, "by immemorial possession, as the original tenants of the soil, they (the Indians) hold a title beyond, and superior, to the British Crown, and her colonies, and to all adverse pretensions of our confederacy, and subsequent union;" and that they are *sovereign nations*.

Now, if these positions be correct, Virginia had no right of soil or jurisdiction to any lands included in her cession, to which the Indian title had not been extinguished, and having no title herself, she could convey none to the United States, and, therefore, the latter had no claim, right, or title of soil or jurisdiction, to the lands in question, when we were admitted into the Union, and consequently have no greater justification, or even apology, for attempting to buy Indian lands in this state, than *in Maine or New-York*.

The other side insists that, all states, new and old equally, have complete and exclusive jurisdiction over all Indians and Indian lands within their respective borders. If this be correct, then, the new states have a right to prohibit the Indians, as the original states did, from selling to any but themselves; or to incorporate them with their own population, and authorize them to hold their lands in severalty, and sell to whom they please. According to this opinion, unless "incompatible rights" can exist, the United States have not only no right to these lands, but can neither acquire them with, nor without the consent of the states in which they lie, except for the purposes specified in the constitution.

In regard to the present question, it may be fortunate that there is no treaty of guaranty to embarrass us. But if there were, so far as it might be inconsistent with the rights of the states, or repugnant to the fundamental principles of our union, I should hold it utterly void. It is the constitution, and not a treaty, that is to decide all questions of power between the Union, and its members. And as the reserved rights of the states equally limit the treaty making, and legislative powers of the United States, it is not perceived how consent could give validity to an unconstitutional treaty, more than to an unconstitutional law.

No compact with any of the new states can justify the exercise of the power in question, for, were they not all void, as being repugnant to fundamental law, as they were obviously intended as a protection to property which had been acquired, and not as a warrant to make new acquisitions, they involve no other obligation, that can have any bearing on this subject, than that of forbearance to interfere with, or to tax lands, which, at their respective dates, *belonged* to the United States; and lands appropri-

nted to the Indians (whose rights the United States have always acknowledged) by the most solemn and formal treaties, can neither be considered waste and unappropriated lands, *nor property of the United States.* Be this, however, as it may, we have made no such compact.

It has already been shown how little is to be gained by setting up the Ordinance of 1787, as a compact against us in other cases. It is, if possible, still more unfortunate for our opponents in the present one. For, if taken in connection with cotemporaneous history, it would seem that no candid and unbiassed mind can doubt that one of those six articles of compact, which were declared to be "*unalterable unless by common consent,*" implies an acknowledgement of our right to purchase Indian lands; and an obligation to permit us to do so.

The article alluded to, contains the following clause: "The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them *without their consent;* and in their property, rights, and liberty, they shall never be invaded nor disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity, shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them."

Now, let it be remembered, that, the object of these six articles of compact, as declared in the preamble to them, was, that *all laws, constitutions, and governments which should forever thereafter be formed in the said territory,* should be *fixed* and *established* upon the *same principles* as those on which *the laws and constitutions* of the several states then composing the confederation *had been erected.* Let it also be recollected, that under the *laws and constitutions* of those states, they then claimed and exercised, and always had claimed and exercised, the exclusive right of extinguishing the Indian title to lands within their respective limits. And what other conclusion can be drawn from the stipulation *not to take from the Indians their lands* WITHOUT THEIR CONSENT. than, that it left us at full liberty to take their lands *with their consent,* as the several states of the confederation were then in the habit of doing, and had long done? If it had not been considered that we should have a right to acquire Indian lands *under our own authority,* why impose a special restriction upon the power to do so?—And would the taking of Indian lands *with their consent,* be a violation of a stipulation not to take them *without their consent?*

In short, in whatever point of view the subject can be considered, the right of the state to lands of this description appears so unquestionable, and the claim of the United States so unfounded, that I feel bound to give it as my opinion, that the state ought no longer to acquiesce in this usurpation of its rights.

But what then should be done? Probably nothing more at present, than a manifestation of firmness of purpose, with all the moderation that is due to a just respect, and kind feelings towards our sister states. I would, therefore, recommend the confirmation of all sales that have been made by the U. S.; a forbearance to tax any of the lands not sold, till the supposed period their exemption shall have expired; and the imposition of a tax of upon all such lands as shall hereafter be sold, without regard to any claim whatever to exemption. The two first are due to innocent purchasers, and will quiet their claims. The last is probably the least exceptionable means we could adopt of asserting our right. And if it is not asserted in some way, it shall be no fault of mine.

Upon the whole subject of the public lands, it seems desirable that the General Assembly should transmit to Congress a respectful memorial, representing their views of the right of the state to those lands, and asking their surrender upon equitable terms.

Not wishing to conceal a sentiment I entertain on this subject, I have no hesitation in saying, that whatever strict legal right might give us, I do not think we ought to wish to obtain those lands, but upon the principle of assuming the obligations of the United States to the Indians, and paying all that the lands have cost.—It may be safely left to posterity to decide whether we, in making such a proposition to secure the independence, and provide for the general welfare of the state, would be more unreasonable, than a great and magnanimous nation, in rejecting it, for the mere purpose of realizing the profits of a landjobber.

Something at least should be done by you, unless it be desirable that, representations heretofore made in Congress, unfavorable to the right of the state, and adverse to the wishes of the people, should be confirmed. Our constituents well understand that a cordial co-operation of the legislature, and our representation in congress, is essential to success; and will not readily be persuaded to attribute a failure to obtain it, to any want of merits in our claim, should the legislature decline to aid, and our members of congress discountenance, or even fail to support it, with their best abilities.

Recent experience shows, that it is no cause of discouragement that error may have long prevailed on the subject. It is not of greater antiquity than that which has, within the last two years, been corrected in relation to Indian rights. The congress of the confederation, as early as the 26th October 1787, declared their opinion that "they might constitutionally fix the bounds between any state, and an independent tribe of Indians," within its chartered limits. But, though this doctrine had been acted upon from that time, to the end of the late administration, the energetic defence of her rights by a single state, has elicited inquiry and in

vestigation, which have exploded this error, and restored to the states their rights of sovereignty, if not of soil.

You have the greater encouragement, because there are several states ready to co-operate with you; and the sagacious politician can scarcely fail to perceive powerful motives to induce every state of the west, ultimately, to lend their aid in procuring, at least, a mitigation of a portion of the grievances that bear so heavily upon us. It cannot be long before there will be several new western states added to the Union. This must, at all events, happen soon enough, to leave upwards of 300 millions of acres of public lands within the western states. These, at the present minimum price, would be a direct charge upon the western section of the Union, of 375 millions of dollars, which, according to the present policy, must be collected in, and sent out of it, to be expended abroad. Identified as is every part of the western country, in the same interests, it is easy to conceive that such a drain of money from any part of it, must operate injuriously upon every part. Kentucky would probably be as much benefitted as Indiana could the latter retain, as a circulating medium, the money which is annually drained from her for public lands. —Louisville undoubtedly would derive more advantages from it, than any town or city in Indiana. All our great cities in particular, wherever situated, have a direct interest in the prosperity of every western state, and must be more or less affected by a policy that tends to impoverish any one of them. But time will not permit me to enlarge upon this subject.

Union, however, among ourselves, is, at present, more important than any thing else. Fearing that my continuance in public life might have some effect in preventing an object so desirable, I have, long since, made up my mind to withdraw to a private station, and never more, I think, to seek a political one.

In conclusion, I have only to add, that I honestly believe the state is entitled to all the public lands within its limits. My former message, and this address, taken together, show my reasons for entertaining that opinion. I may be wrong and shall always treat the opinions of others, who differ from me, with all the respect that becomes a gentleman; but, so long as I retain my present convictions, I shall not be driven from their support, by *any* personal consequences, much less by abuse and sneers, that show an equal want of good sense and good breeding.

NINIAN EDWARDS.